

6003

*Richard  
Civ. Pers*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE: B-186595**

**DATE: April 10, 1978**

**MATTER OF: Modesto Canales - Per Diem**

**DIGEST:** Customs Service employee requests reconsideration of decision terminating his per diem while he was on temporary duty. Customs Service memorandum states that while employee was on detail he notified Customs by phone of his desire to transfer to position to which he was at that time detailed. Employee states he never agreed to accept transfer until after his temporary duty ended. Considering the circumstances in this case and the fact that the Customs Service memorandum was not written by the official with whom employee spoke, we accept employee's version of facts and find he did not accept the position to which he was detailed until after his detail ended. Therefore, employee was properly paid per diem for duration of detail.

Mr. Modesto Canales, Assistant Regional Commissioner (Administration), United States Customs Service, has requested reconsideration of our decision B-186595, July 7, 1977, which concerned his per diem entitlement while he was assigned to temporary duty in Houston, Texas.

The facts are stated in our earlier decision and need be repeated only briefly as follows. Mr. Canales, who was the Director of the Financial Management Division, GS-15, stationed in New York, applied for and was (on December 9, 1975), accepted for a position of Assistant Regional Commissioner (Administration), GS-15, in Houston, Texas. Mr. Canales states that he felt the position in Houston was subject to a downgrading action so he refused to accept the position. He was then detailed to act as Assistant Regional Commissioner in Houston from January 16 to May 14, 1976, whereupon he returned to New York. On June 6, 1976, Mr. Canales was transferred to Houston to the position to which he had been previously detailed.

Our decision of July 7, 1977, on this matter held as follows:

"\* \* \* Mr. Canales neither accepted the position of Assistant Regional Commissioner in Houston, nor was he permanently

B-186595

appointed to such position when detailed there since the position was subject to downgrade action. The administrative record, upon which we rely heavily, shows that as far as the parties were concerned at the time the detail was initiated, the detail was for a temporary period not to be followed by a permanent transfer. Only subsequently was it finally determined that Mr. Canales would in fact be permanently transferred to Houston. Therefore, the situation here is different from that in 24 Comp. Gen. 593, supra, where the employee knew he was being permanently appointed and the only delay was caused by administrative processing. In view of the circumstances of this case, we would not object to the payments of transportation and per diem expenses made to Mr. Canales while on temporary duty in Houston. B-157551, October 27, 1965.

"Given the fact that Mr. Canales would have accepted the transfer to Houston but for the possible downgrade action, however, it becomes necessary to determine the date he learned he would be transferred there as his entitlement to per diem in Houston would of course end on the day he received knowledge of his ultimate transfer. 23 Comp. Gen. 342, supra. According to a report on this matter dated May 17, 1977, from Mr. John A. Hurley, Assistant Commissioner of Customs, Administration, Mr. Canales finally agreed on May 7, 1976, to transfer to Houston effective June 6, 1976. Therefore, since Mr. Canales knew on May 7, 1976, while on detail to Houston, that he would be transferred there, he would not be entitled to per diem while in Houston from May 7, 1976, onwards."

As a result of the above decision, the Customs Service has required that Mr. Canales repay \$161 representing the per diem he had received for the period of May 7 through May 13, 1976. Mr. Canales contests the repayment on the following basis:

"I am unaware of any statement made by myself in the telephone conversation of May 7, 1976, which could be misconstrued to indicate that I was willing to accept the appointment as

B-186595


Assistant Regional Commissioner (Adm.) on that date. I do recall the expression of my intention to discuss the possible appointment with my family upon return to my regular duty station, and after reaching a decision, to convey said decision by memorandum to the Deputy Commissioner of Customs.

"In this regard, I feel the administrative record establishing the date of my acceptance of this position, is incorrect, as evidenced by my intent as expressed in the attached memorandum dated May 25, 1976.

"Therefore, since my detail was neither officially terminated on May 7, 1976, nor was I ordered to return to New York on this date, I respectfully request relief from refunding any per diem paid to me from May 7 thru May 13, 1976."

We note that the telephone conversation of May 7, 1976, in which Mr. Canales allegedly agreed to transfer to Houston was held with an employee in the Customs Service's Personnel Division and not with Assistant Commissioner Hurley. This conversation was related to Mr. Hurley, who then wrote the memorandum concerning his understanding of the results of the telephone call. Therefore, in view of the circumstances of this case, we will accept Mr. Canales' statement of the facts as being the best evidence available as to the decision reached in the May 7, 1976, telephone call.

We conclude, upon reconsideration, that Mr. Canales did not accept the position of Assistant Regional Commissioner until May 25, 1976, when he wrote a memorandum accepting the transfer and at which point his detail to Houston had already been terminated. Accordingly, Mr. Canales may properly retain the \$161 representing the per diem paid to him for the period of May 7 to May 13, 1976, the end of his detail in Houston. Decision B-186595, July 7, 1977, is modified accordingly.

  
Deputy Comptroller General  
of the United States